

DEFENSE

**Agreement Between the
UNITED STATES OF AMERICA
and the PHILIPPINES**

with Appendix

Signed at Washington and Manila September 17, 2018 and
April 15, 2019

Entered into force April 15, 2019



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966
(80 Stat. 271; 1 U.S.C. 113)—

“ . . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”

SPECIAL SECURITY AGREEMENT
BETWEEN
THE DEPARTMENT OF DEFENSE OF THE UNITED STATES OF AMERICA
AND
THE DEPARTMENT OF NATIONAL DEFENSE OF
THE REPUBLIC OF THE PHILIPPINES
CONCERNING
SECURITY MEASURES FOR
THE ADVANCED PRECISION KILL WEAPON SYSTEM II

The Department of Defense of the United States of America ("U.S. DoD") and the Department of National Defense of the Republic of the Philippines ("PHL DND") (hereinafter referred to as "the Parties"):

Having a longstanding, cooperative relationship in the field of defense;

Recognizing the Mutual Defense Treaty Between the United States of America and the Republic of the Philippines, signed at Washington August 30, 1951, which entered into force August 27, 1952;

Recognizing the Mutual Defense Assistance Agreement Between the United States of America and the Republic of the Philippines (MDAA), effected through an exchange of notes at Manila on June 26, 1953, which entered into force July 5, 1953;

Recognizing the Agreement Between the Government of the United States of America and the Government of the Republic of the Philippines on Enhanced Defense Cooperation, signed at Quezon City on April 28, 2014, which entered into force June 25, 2014, as amended;

Recognizing that the Advanced Precision Kill Weapon System II, including any modifications or enhancements thereto, System ("APKWS") provides new technologies that represent a significant increase in capability and effectiveness; and,

Recognizing that the introduction of sensitive technology incorporated into and associated with the APKWS and associated ancillary mission equipment requires special security measures to be established;

Hereby agree as follows:

1. Purpose:

1.1. This Special Security Agreement ("SSA") provides security measures applicable to the APKWS and to all Classified Military Information, including classified equipment, technology, and material, provided, held, used, or generated in connection with the Foreign Military Sales

("FMS") acquisition, sale, and sustainment of the APKWS (any or all of which are referred to as "APKWS Classified Military Information").

1.2. The PHL DND shall implement and abide by the special security measures applicable to the APKWS and all APKWS Classified Military Information set forth in this SSA.

1.3. The definitions set forth in the Appendix shall apply to the terms used in this SSA.

2. Security Framework:

2.1. The APKWS and all APKWS Classified Military Information provided, held, used, or generated in connection with the FMS acquisition and sale of the APKWS shall be afforded protection pursuant to Article 5 of the MDAA and shall be subject to the specific provisions of this SSA, and any other security agreements and arrangements that the Parties determine are necessary for so long as the PHL DND owns, operates, maintains, or otherwise controls the APKWS or APKWS Classified Military Information.

2.2. The APKWS and all APKWS Classified Military Information that has been provided to it by the other Party shall be transferred only through government-to-government channels that are approved by the National Security Authorities ("NSA") or Designated Security Authorities ("DSA") of the Parties. Such APKWS and APKWS Classified Military Information shall be designated with the level of classification and denote the country of origin.

2.2.1. For the U.S. DoD, the DSA is the Director, International Security Programs, Defense Technology Security Administration ("DTSA"), Office of the Under Secretary of Defense for Policy.

2.2.2. For the PHL DND, the DSA is the Deputy Chief of Staff for Intelligence, Armed Forces of the Philippines (AFP/J2).

2.3. Each Party shall take all lawful steps available to it that are necessary to ensure that the APKWS and APKWS Classified Military Information that has been provided to it by the other Party is protected from disclosure to a Third Party unless the originating Party consents in writing to such disclosure. Accordingly, each Party shall ensure that:

2.3.1. The recipients of APKWS or APKWS Classified Military Information shall not release or grant access to such APKWS or APKWS Classified Military Information to any Third Party without the prior written consent of the originating Party.

2.3.2. The recipients of the APKWS or APKWS Classified Military Information shall not use the APKWS or APKWS Classified Military Information for purposes other than those provided for in the Letter of Offer and Acceptance ("LOA") between the Governments of the Parties for the transfer of APKWS or APKWS Classified Military Information to the Republic of the Philippines.

2.3.3. The recipients of the APKWS or APKWS Classified Military Information shall comply with all LOA terms regarding distribution and access restrictions on the APKWS or APKWS Classified Military Information.

2.4. The PHL DND shall investigate all cases in which it is known or where there are grounds for suspecting that the APKWS or APKWS Classified Military Information has been tampered with, transferred, lost, compromised, reverse-engineered, used for any other purpose other than the

purpose for which it was furnished, or disclosed to unauthorized persons. Each Party shall promptly inform the other Party in writing of the details of any such occurrences, of the outcome of investigations, and of all corrective actions taken to preclude recurrence.

2.5. The U.S. DoD DSA shall certify and approve all PHL DND facilities wherein the APKWS or APKWS Classified Military Information is to be stored, processed, used, or discussed as provided in paragraph 3.1. of this SSA. For any PHL DND facility wherein the APKWS or APKWS Classified Military Information is to be stored, processed, used, or discussed, the PHL DND shall approve the appointment of a person or persons of sufficient rank as officials to exercise the responsibilities effectively for safeguarding and accounting for the APKWS or APKWS Classified Military Information at such facilities. These officials shall be responsible for limiting access to the APKWS or APKWS Classified Military Information to those persons who have been properly approved for access and have a specific Need-to-Know in connection with official duties related to the APKWS or APKWS Classified Military Information.

2.6. The PHL DND shall take all lawful steps available to it to ensure that the APKWS or APKWS Classified Military Information provided, exchanged, held, used, or generated pursuant to this SSA is protected from unauthorized disclosure.

2.6.1. The PHL DND shall ensure access to the APKWS or APKWS Classified Military Information is limited to those persons whom the PHL DND has cleared for access to the APKWS or APKWS Classified Military Information.

2.6.2. The PHL DND shall ensure that personnel requiring access to the APKWS or APKWS Classified Military Information have been properly approved for access, possess the requisite security clearances, and have a specific Need-to-Know for access to the APKWS or APKWS Classified Military Information in connection with official duties related to the APKWS, including its acquisition, operation, or maintenance.

2.6.3. The PHL DND shall not disclose any APKWS Classified Military Information to anyone who is not a citizen of the Republic of the Philippines or the United States of America, and who is not a cleared officer or employee of the U.S. DoD, PHL DND, or the contractors of the U.S. DoD or the PHL DND, unless the U.S. DoD DSA provides prior written consent.

3. Security Measures:

3.1. The PHL DND shall store all APKWS and APKWS Classified Military Information in U.S. DoD DSA-certified and accredited facilities at designated PHL DND installations. The U.S. DoD shall not deliver the APKWS or APKWS Classified Military Information prior to the U.S. DoD DSA certifying all facilities where the APKWS or APKWS Classified Military Information is to be stored, processed, used, or discussed.

3.2. The PHL DND shall develop a security plan detailing the control, storage, physical security, accountability, and access to the APKWS and APKWS Classified Military Information; shall enforce procedures to prevent unauthorized access to the APKWS or APKWS Classified Military Information; and shall not permit any unauthorized intrusion, disassembly, examination, or production of any components. The security plan must be certified and accredited in accordance with the U.S. Risk Management Framework program by the U.S. DoD DSA prior to delivery of any APKWS or APKWS Classified Military Information.

3.3. U.S. DoD personnel shall have access to all PHL DND-designated APKWS facilities. The U.S. DoD shall coordinate with the PHL DND DSA to obtain access and shall be escorted by designated AFP personnel at all times while accessing such facilities.

3.4. The PHL DND shall not allow any unauthorized access to or any attempts to reverse engineer the APKWS or APKWS Classified Military Information and shall not allow any unauthorized access to, downloading, modification, or duplication of software.

3.5. The U.S. DoD shall also conduct end-use, security, and accountability inspections during periodic Compliance Assessment Visits ("CAV") performed by the Defense Security Cooperation Agency. The U.S. DoD shall provide the results of the CAV to the PHL DND within sixty (60) days after the completion of the visit for information and/or corrective action as appropriate.

4. Financial:

4.1. The PHL DND shall bear all costs associated with the additional security measures described in paragraphs 3.1. and 3.2. of this SSA. The PHL DND shall also provide, at its own expense, to the U.S. DoD, in-country transportation and access to the locations of materials covered by this SSA.

5. Amendments, Termination, and Entry Into Force:

5.1. This SSA, including its Appendix, may be amended by mutual written agreement of the Parties, including to add security provisions related to the APKWS Program.

5.2. In the event termination of this SSA is anticipated, the Parties shall consult prior to the date of termination to ensure termination takes place in the most economical and equitable manner.

5.3. This SSA may be terminated at any time upon written agreement of both Parties, and either Party may terminate this SSA with one hundred eighty (180) days written notification to the other Party of its intent to terminate.

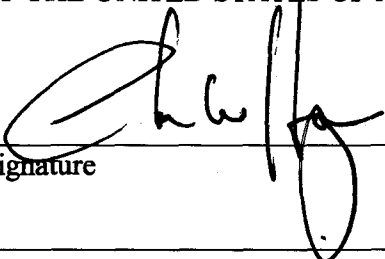
5.4. Notwithstanding any other provision in this SSA or its termination, the provisions of paragraphs 2., 3., and 4. of this SSA shall remain in force and the obligations of the Parties shall continue for so long as the PHL DND owns, operates, maintains, or otherwise controls any APKWS or APKWS Classified Military Information.

5.5. This SSA shall enter into force upon the last signature of the Parties.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their Governments, have signed this SSA.

DONE in duplicate in the English language.

FOR THE DEPARTMENT OF DEFENSE
OF THE UNITED STATES OF AMERICA



Signature

Name Charles W. Hooper

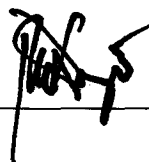
Title Lieutenant General, USA
Director, DSCA

Date

17 SEP 2018

Location Washington, DC

FOR THE DEPARTMENT OF
NATIONAL DEFENSE OF THE
REPUBLIC OF THE PHILIPPINES



Signature

Name PABLO M LORENZO

Title MAJOR GENERAL AFP
Deputy Chief of Staff for Intelligence, J2

Date

April 15, 2019

Location
Manila, Philippines

APPENDIX A

DEFINITIONS

The Parties have decided upon the following definitions of terms used in this SSA:

Classified Military Information	Any defense-related information that is generated by or for the use of or held by the Department of Defense of the United States of America or the Department of National Defense of the Republic of the Philippines, or defense-related information generated by or for the use of or held by other relevant authorities of the Government of the United States of America or the Government of the Republic of the Philippines, and that requires protection against unauthorized disclosure in the interests of national security of the originating Party. The information shall be designated with a security classification and, where necessary, an appropriate indication to identify such information as Classified Military Information. Such information may be in oral, visual, electronic, magnetic, or documentary form, or in the form of equipment or technology.
Need-to-Know	A determination made by an authorized holder of Classified Military Information that a prospective recipient, in the interest of national security, has a requirement for access to, knowledge of, or possession of the Classified Military Information in order to perform tasks or services essential to the fulfillment of a Party's requirements.
Third Party	A government other than the Government of a Party; any other entity that is not the contractor of a Party; any individual who is not an officer, agent, contractor, or employee of the Government of a Party; and any individual or entity whose government is not the Government of a Party.